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In re Application of :  
Kraenzler :  
Application No. 10/049,546 : DECISION ON  
PCT No.: PCT/DE01/02024 :  
Int. Filing Date: 25 May 2001 : PETITION UNDER  
Priority Date: 15 June 2000 :  
Atty. Docket No.: 1969 : 37 CFR 1.137(b)  
For: Power Tool With At Least One Handle :  
:

This is in response to the "Petition Top Revive" and the "Petition TO Accept Patent Application Without Signature Of All Inventors" filed on 05 June 2003, which are being treated under 37 CFR 1.137(b) and 37 CFR 1.47(a), respectively.

### **BACKGROUND**

This international application was filed on 25 May 2001, claimed an earliest priority date of 15 June 2000, and designated the U.S. No Demand electing the United States was filed prior to the elapse of 19 months from the priority date. The International Bureau transmitted a copy of the published international application to the USPTO on 30 May 2003. The 20 month time period for paying the basic national fee in the United States expired at midnight on 15 February 2002.

On 13 February 2002, applicants filed *inter alia* the basic national fee.

On 07 May 2002, a Notification of Missing Requirements (Form PCT/DO/EO/905) was mailed to applicants, requiring the submission of a copy of the international application and an executed oath or declaration of the inventors. This international application became abandoned with respect to the national stage in the United States for failure to timely reply to the Notification of Missing Requirements.

### **DISCUSSION**

#### *Petition Under 37 CFR 1.137(b)*

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by (1) the required reply, unless previously filed; (2) the petition fee as set forth in § 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a

question whether the delay was unintentional; and (4) any terminal disclaimer (and fee as set forth in § 1.20 (d)) required pursuant to paragraph (c) of this section.

Regarding requirement (1), the required reply in the form of an executed oath or declaration of the inventors has not been filed, as explained in the treatment of the petition under 37 CFR 1.47(a) below. The requirement for a copy of the international application has been satisfied, since the USPTO has now received the published international application from the International Bureau. As such, requirement (1) has not yet been satisfied.

Regarding requirement (2), the petition includes authorization to charge the petition fee to petitioner's Deposit Account.

Regarding requirement (3), the petition includes a statement that "the entire delay from the due date for reply to the filing of a grantable petition was unintentional." This statement is being construed as a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional." Petitioner must notify the Patent and Trademark Office if such an interpretation of the statement in the petition is not correct. Thus, the statement in the petition is being accepted in satisfaction of 37 CFR 1.137(b)(3).

Regarding requirement (4), no terminal disclaimer is required because the international filing date of this application is later than 8 June 1995.

#### *Petition Under 37 CFR 1.47(a)*

A petition under 37 CFR 1.47(a) must be accompanied by (1) the fee under 37 CFR 1.17(h), (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor. Petitioner has satisfied requirements (1) and (4), but has not satisfied requirements (2) and (3).

Regarding requirement (1), the petition includes authorization to charge the petition fee to petitioner's Deposit Account.

Regarding requirement (2), petitioner urges that non-signing joint inventor Franz Scheschark "has steadfastly refused to sign the application papers." However, the evidence currently of record does not clearly establish that this alleged refusal was a refusal to execute an oath or declaration directed to this specific U.S. national stage application, after being presented with the oath or declaration and a copy of the international application. The evidence of communications with Mr. Scheschark suggests his refusal to sign unspecified papers related to Robert Bosch GmbH reference R.38531. However, counsel has not specifically established that the papers Mr. Scheschark is refusing to sign include an oath or declaration. Neither has petitioner clearly established that Mr. Scheschark has been presented with a complete copy of the international application he is being asked to execute. In the absence of specific showings on these points, it would not be appropriate to conclude

requirement (2) to have been satisfied.

Regarding requirement (3), the petition does not include an explicit statement of non-signing joint inventor Franz Scheschark's last known address. Accordingly, requirement (3) has not been satisfied.

Regarding requirement (4), the declaration is acceptable for purposes of compliance with 35 U.S.C. 371.

### **DECISION**

The petition under 37 CFR 1.137 (b) is **DISMISSED**, without prejudice.

The petition under 37 CFR 1.47 (a) is **DISMISSED**, without prejudice.

Counsel's Deposit Account No. 19-4675 is being charged in the amounts of \$1330.00 and \$130.00 for the petition fees, as authorized by the instant submission.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(b)" and/or "Renewed Petition Under 37 CFR 1.47 (a)." No additional petition fee is required. Extensions of time may be obtained under 37 CFR 1.136(a).

Please direct any further correspondence with respect to this matter to the Assistant Commissioner for Patents, Mail Stop PCT, Alexandria, VA 22313-1450, and address the contents of the letter to the attention of the PCT Legal Office.



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